

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

BEAU COLEMAN,

Plaintiff,

v.

6:14-CV-988

ONEIDA COUNTY DISTRICT ATTORNEY, et al.,

Defendants.

DECISION & ORDER

Thomas J. McAvoy, Senior District Judge.

This *pro se* civil rights action pursuant to 42 U.S.C. § 1983 was referred to the Honorable Andrew T. Baxter, United States Magistrate Judge, for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c).

In his Report-Recommendation, dated September 9, 2014, Magistrate Judge Baxter recommends that Plaintiff's motion to proceed *in forma pauperis* be granted and that his claims be dismissed with prejudice as against all named Defendants pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(i-iii). Magistrate Judge Baxter finds that Plaintiff has failed to state a claim upon which relief could be granted because the individual Defendants enjoy immunity from suit and the County cannot be liable for the conduct of the individual Defendants. Magistrate Judge Baxter recommends, however, that the Complaint be dismissed without prejudice and Plaintiff permitted to file an amended complaint that replaces the earlier action.

Plaintiff did not file any objections to the Report-Recommendation. After examining

the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice. Accordingly, this Court adopts the Report-Recommendation for the reasons stated therein.

It is therefore ordered that:

(1) The Report-Recommendation, dkt. # 8, is hereby **ADOPTED**;

(2) Plaintiff's motion to proceed *in forma pauperis*, dkt. # 7, is hereby **GRANTED**;

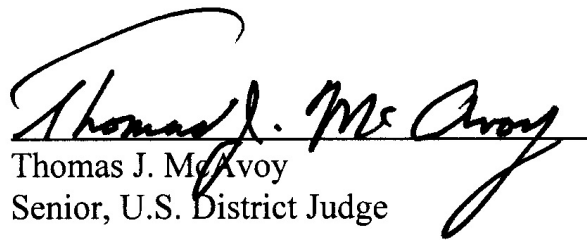
(3) Plaintiff's Complaint against Defendants Oneida County District Attorney, Oneida County Clerk, Oneida County Attorney and County of Oneida is **DISMISSED WITH PREJUDICE** pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A(b)(1) for failure to state a claim upon which relief may be granted;

(4) Plaintiff's Complaint is **DISMISSED WITHOUT PREJUDICE** to the extent that Plaintiff can submit a proposed amended complaint against any other defendant amenable to suit; and

(5) Plaintiff may file an Amended Complaint within sixty (60) days of the date of this Order. The Amended Complaint should set forth in a short and plain statement the facts upon which Plaintiff relies to support his claim that the parties named as defendants engaged in misconduct or wrongdoing that violated Plaintiff's rights. Plaintiff should be aware that any amended complaint completely replaces the Complaint previously filed. Plaintiff may not incorporate any of the allegations in the previous Complaint in his amended complaint by reference.

IT IS SO ORDERED.

Dated: October 1, 2014



Thomas J. McAvoy
Senior, U.S. District Judge